BORA LASKIN LAW LIBRARY
3 1761 03324 9392

MUNICIPAL AND PLANNING LAW

S. M. Makuch

Volume I

1990–1991

With the assistance of

Gabrielle Kramer

Faculty of Law

University of Toronto

KF
5612
.A2
H2
1990
v.1

LAW LIBRARY

SEP 6 1990

FACULTY OF LAW
UNIVERSITY OF TORONTO

FACULTY OF LAW LIBRARY
UNIVERSITY OF TORONTO

MUNICIPAL AND PLANNING LAW

S. M. Makuch

Volume I

1990–1991

With the assistance of

Gabrielle Kramer

Faculty of Law

University of Toronto

Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

https://archive.org/details/municipalplannin01maku_2

MUNICIPAL AND PLANNING LAW

Table of Contents

PART I

CHAPTER I

Introduction 1

Jarvis, Acting for a Developer 2

Michaelman, Politics and Values 5

Robarts, Report of the Royal Commission on Metropolitan Toronto 6

Dupre, Intergovernmental Finance in Ontario: A Provincial-Local Perspective 11

Plunkett, The Financial Structure and the Decision-Making Process of Canadian Municipal Government 16

Notes and Questions 21

CHAPTER II

THE ORGANIZATION OF MUNICIPALITIES

Introduction 22

A. Approaches to Municipal Organization 23

Plunkett, Urban Canada and Its Government 23

Note 29

Frug, City as Legal Concept 29

1. Municipal Council 30

Royal Commission on Metropolitan Toronto UPDATE 30

2. The Executive 31

(i) The Mayor 31

Jaffary & Makuch, Local Decision-Making and Administration 31

(ii) Reforming the Mayoralty 32

Jaffary and Makuch, Local Decision-Making and Administration 32

3. The Board of Control - Executive Committee 34

(i) Description 34

Plunkett, Urban Canada and Its Government 36

Notes 36

Jaffary & Makuch, Local Decision-Making and Administration 37

(ii) Reform 37

Rowat, The Canadian Municipal System 39

4. The Manager Plan 41

Rowat, The Canadian Municipal System 41

Notes and Questions 43

5. Council-City Commissioner System 45

Plunkett, Urban Canada and Its Government 45

6. Standing Committees 46

Jaffary and Makuch, Local Decision-Making 46

Note 46

7. Approaches to Reform 47

(i) The Basic Assumption - Policy v. Administration 47

Jaffary and Makuch, Local Decision-Making and Administration 47

Hickey, Decision-Making Processes in Ontario's Local Governments 51

(ii) Three Examples of Reform 57

(a) Winnipeg 57

Proposal for Urban Reorganization in the Greater Winnipeg Area 57

Note 60

Cook & Feldman, Approaches to Local Government Reform in Canada: The Case of Winnipeg 61

W. Magnusson
City Politics in Canada 62

(b) Administrative Districts 63

Jacobs, The Death and Life of Great American Cities 63

(c) Toronto 65

City of Toronto Neighbourhood Services Work Group, Report 65

B. The Reorganization of Municipalities 69

1. The Need for Reform 69

Advisory Committee on Intergovernmental Relations, In Search of Balance: Canada's Intergovernmental Experience 69

Advisory Committee on Intergovernmental Relations, Alternative Approaches to Governmental Reorganization in Metropolitan Areas 71

2. Distribution of Responsibilities 76

(i) The Metropolitan Toronto Example 76

(ii) Regional Government 77

The Ontario Committee on Taxation, Report: Volume II - The Local Revenue System 77

Notes 84

3. The Problems With Reorganization 84

(i) Boundaries 84

Robarts, Report of the Royal Commission on Metropolitan Toronto 85

(ii) Special Purpose Bodies 86

Bureau of Municipal Research, "The 101 Governments of Metro Toronto" 86

Jaffary and Makuch, Local Decision-Making and Administration 95

Note 96

(iii) Representation 96

Jaffary and Makuch, Local Decision-Making and Administration 96

(iv) Intra Regional Conflict 102

Simpson, City Loses important Votes at First Meeting of Metro Council 102

Globe & Mail, City Decides on Legal Fight over Spadina 102

Note 103

Globe & Mail, York Joins City in Opposing Spadina Paving 103

Note 105

Weinstein, "The Effect of the Federal Reapportionment Decisions on Municipal Government" 105

(v) An Alternative: The Winnipeg Experience 106

Committee of Review City of Winnipeg Act, Report and Recommendations 106

Globe & Mail, Assessing the Plan to Reform Winnipeg's Government 113

CHAPTER III

LOCAL GOVERNMENT FINANCING

Introduction 120

A. Introduction 121

1. Municipal Finance Generally 121

Plunkett, The Financial Structure and the Decision-Making Process of Canadian Municipal Government 121

Local Government Finance in Ontario (Ministries of Treasury and Economics & Intergovernmental Affairs) 121

2. The Property Tax 136

The Ontario Committee on Taxation, Report: Volume II - The Local Revenue System 136

Plunkett, The Financial Structure and the Decision-Making Process of Canadian Municipal Government 138

B. Restraints on Municipal Finance 140

1. Political Restraints 140

Plunkett, The Financial Structure and The Decision-Making Process of Canadian Municipal Government 140

Statement by Paul V. Godfrey, President Canadian Federation of Mayors and Municipalities 144

Notes 146

2. Legal Restraints 146

Re Corporation of the Township of Nepean 147

Jaffary and Makuch, Local Decision-Making and Administration 153

City of Toronto v. Municipality of Metropolitan Toronto 159

Re Victoria Harbour Sewage Service 162

Lewis v. Town of Prescott 167

Note 168

C. Property Tax Assessment 169

1. Who is Liable for Property Taxation 169

2. What is Assessable Property 169

Northern Broadcasting Co. Ltd. v. Improvement District of Mountjoy 170

Notes and Questions 173

3. Exemptions from Taxation 174

Makuch, Municipal and Planning Law 174

(i) Crown Land 175

Makuch, Municipal and Planning Law 175

Notes 177

(ii) Indian lands 177

(iii) Places of Worship and Cemeteries 177

Re Presbyterian Church Building Corp. and Assessment Comm. for Algoma 177

Re Singh and City of Sudbury 181

Notes 186

(iv) Public Education Institutions, Philanthropic or Religious Seminaries and Educational Seminaries 186

Notes 187

Seafarers Training Institute v. Township of Williamsburg 188

Notes 192

(v) Public Hospitals, Highways, Municipal Property, Boy Scouts and Girl Guides and Industrial Farms 193

(vi) Municipal Properties 193

Makuch, Municipal and Planning Law

Notes 194

(vii) Charitable Institutions 195

Makuch, Municipal and Planning Law 195

Notes 196

(viii) Children's Aid Societies, Scientific or Literary Institutions and Battle Sites 197

(ix) Machinery and Equipment Used for Manufacturing or Farming Purposes 197

Notes 197

(x) The Interpretation of "Property Of" 198

Makuch, Municipal and Planning Law 198

(xi) Exceptions to Certain Exemptions and Municipal Exemptions 199

Makuch, Municipal and Planning Law 199

(xii) Bonuses 200

Re Whitton and City of Ottawa 200

Note 201

4. Valuation of Property 203

(i) Market Value 203

Ward, Market Value Re-Assessment 203

Montreal v. Sun Life Assurance Co. of Canada 210

Assessment Commissioner of the York Assessment Office v. Office Speciality Ltd. 221

Carreiro et al. v. Regional Assessment Commissioner, Region No. 9 223

Notes 225

(ii) Equity 226

(a) Introduction 226

Joint Committee on Property Tax Reform Interim Report: The Present Property Tax System 226

Note 228

(b) Section 65 228

Foxhead Inn Ltd. v. Regional Assessment Commissioner 229

Regal Stationary Co. Ltd. v. Regional Assessment Commissioner, Region No. 11 230

Downtown Oshawa Property Owners' Association, Hovell Holdings Limited and Drew Estate v. Regional Assessment Commissioner, Region Number 13, The Corporation of the City of Ottawa 231

Notes 234

Regional Assessment Commissioners Region No. 2 et al. v. Ontario Steel Products Co. Ltd. 235

Notes 238

(c) Section 63 238

Campeau v. Regional Assessment Commissioner, Region No. 29 238

(iii) Special Provision for Farm Land 239

(iv) Special Provisions for Reforested Lands, Wood Lands and Orchards 240

(v) Special Provisions for Golf Courses 240

(vi) Other Special Provisions 240

5. Business Assessment 241

(i) Liability for Business Assessment - Carrying on a Business 241

Regional Assessment Commissioner v. Caisse Populaire de Hearst Ltée 241

Notes and Questions 245

Re Saga Canadian Management Services Ltd. and City of Ottawa et al. 246

Notes 251

(ii) Rate of Business Assessment 252

Re Regional Assessment Commissioner, Region No. 18 and Hudson's Bay Co. 252

Notes and Question 258

6. Appeals 259

Downtown Churchworkers Association of the Anglican Church of Canada and Dioceses of Toronto v. Regional Assessment Commissioner, Region No. 7 et al. 260

D. Local Improvements and Special Assessment 266

E. Reform 267

Financing Development of Local Government in Ontario 267

Notes and Questions 268

Report of the Royal Commission on Metropolitan Toronto 269

CHAPTER IV

JUDICIAL REVIEW OF MUNICIPAL ACTION

Introduction 287

A. Constitutionality 288

(i) Distribution of Powers: case summaries 288

Notes and Questions 292

(ii) The Charter of Rights and Freedoms 292

McCutcheon v. City of Toronto 292

Canada (Eve) Studio v. Winnipeg 295

Blanchfield v. Corp. City of Ottawa 297

Notes 297

Tushnet, Ely and Constitutional Theory 298

Tribe, Process Based Theories 298

Judicial Review 299

Eddington v. Corporation of the District of Surrey 299

B. Express Authority 299

Ottawa Electric Light Co. v. Corporation of Ottawa 299

Note 300

Morrison v. Kingston 301

Re Pride Cleaners and Dyers 303

Re Christie Tax Ld. and Doran 306

Notes 307

Re Regional Municipality of Ottawa-Carleton and Voyageur Colonial Ltd. et al. 308

Re Weir et al. and the Queen 311

Notes and Questions 314

Report of the Royal Commission on Metropolitan Toronto 317

C. Delegation 319

(i) To Employees 319

Russell v. The Corporation of Toronto 319

R. v. Sandler 320

R. v. Campbell 323

(ii) To Council Committees 324

Simon v. Gastonguay et al. 324

(iii) To the Community 327

R. v. Sepanary 327

Re Davies and Village of Forest Hill 328

(iv) Reform 331

Report of the Royal Commission on Metropolitan Toronto 331

D. Discrimination 332

(i) Subclassification 332

Re Bunce and Town of Coburg 332

R. v. Donald B. Allen Ltd. 334

City of Ottawa v. Royal Trust Co. 335

City of Montreal v. Arcade Amusements 338

(ii) Permits and Licences 352

City of Verdun v. Sun Oil Co. Ltd. 352

(iii) Administrative Action 355

Atkinson v. Municipality of Metropolitan Toronto 355

E.	Fettering	357
	Galt Canadian Woodworking Machinery v. City of Galt	357
F.	The Impact of Provincial Policy	358
	Re Regional Municipality of Ottawa-Carleton and Township of Marlborough	358
	R. v. Morin	361
	A.G. for Ontario v. City of Mississauga	364
G.	Vagueness	379
	City of Montreal v. Arcade Amusements	379
	Re Information Retailers Assoc. of Metropolitan Toronto and Municipality of Metropolitan Toronto	383
	Notes	385
H.	Unreasonableness	386
	Kruse v. Johnson	386
	Note	387
I.	Bad Faith	388
	Re Howard and City of Toronto	388
	Kuchma v. Rural Municipality of Tache	391
	Canada (Eve Studio) v. Winnipeg	393
J.	Geographic Limitations	397
	R. v. Roy	397
	Notes	402
K.	Technical Requirements	403
	Re Whitton and City of Ottawa	403